

IN THE HIGH COURT OF JUDICATURE AT BOMBAY**CIVIL APPELLATE JURISDICTION**

**APPEAL FROM ORDER (STAMP) NO.23922 OF 2019
WITH
CIVIL APPLICATION (STAMP) NO.23924 OF 2019
IN
APPEAL FROM ORDER (STAMP) NO.23922 OF 2019
WITH
CIVIL APPLICATION (STAMP) NO.24491 OF 2019
IN
APPEAL FROM ORDER (STAMP) NO.23922 OF 2019**

DCB Bank Ltd.

...Appellant

vs.

Nexus Petrochem Pvt. Ltd. And Ors.

...Respondents

.....

Dr. Birendra Saraf, a/w. Mr. Nikhil Rajani, i/b. V. Deshpande & Co., for
the Appellant.

Mr. Arshil Shah, a/w. Mr. Sunil Chaturvedi, i/b. Chiyarajwala & Co., for
Respondent No.1.

.....

CORAM : S.C. GUPTE, J.**DATED : 29 AUGUST 2019****P.C. :**

. Heard. This appeal from order challenges an order passed by the Bombay City Civil Court at Dindoshi. Respondent No.1 (original plaintiff) applied for protective reliefs under Order 38 Rule 5 in respect of properties of Respondent Nos. 2 to 4 (original defendants). The application was made in a commercial suit filed under Order 37 of the Code of Civil Procedure against Respondent Nos. 2 to 4, who are claimed to be debtors of the plaintiff. On that application, ad-interim injunction

order was passed in favour of the plaintiff. The impugned order has been passed on the application of the Appellant, who intervened in the suit before the trial court and sought to vacate the interim injunction granted in favour of the plaintiff. It was the Appellant's case that the properties, in respect of which the injunction order was passed in favour of the plaintiff, had been mortgaged by deposit of title deeds in favour of the Appellant by the original defendants (Respondent Nos. 2 to 4 herein). The City Civil Court, by its impugned order, refused to vacate the ad-interim injunction issued earlier in favour of the plaintiff and continued the same. That order is challenged in the present appeal from order.

2. After the appeal is heard at some length, it is agreed between the parties that the appeal may be disposed of in terms of the following order. It is accordingly ordered as under :

(a) The ad-interim injunction granted by the trial court is vacated at the instance of the Appellant herein. The Appellant shall be entitled to proceed with, or allow the constituents, namely, original defendants to the commercial suit, disposal of the properties described in the plaint.

(b) With a view to protect the interest of the plaintiff, a sum of Rs.4 lakhs, corresponding to the plaintiff's claim in the commercial suit, shall be deposited from out of the sale proceeds of the properties by the Appellant/Intervener in the City Civil Court. The Registrar of the Court shall cause the amount so deposited to be invested in fixed deposit/s of

nationalised bank/s initially for a period of one year and renewable from time to time so as to abide by the orders passed by the City Civil Court in the commercial suit.

(c) The Appellant shall be allowed to intervene in the suit and be heard in it. It is made clear that the Appellant's intervention shall be restricted to the sum of Rs. 4 lakhs deposited in the suit as security of the plaintiff. It will be open to the Appellant to submit that the plaintiff is not entitled to this amount by reason of the superior right of the Appellant as a secured creditor and mortgagee in respect of the property. All rights and contentions of the parties in that behalf are kept open.

(d) The Appellant/Intervener shall give inspection of documents, on which he relies in support of his case of mortgage of the suit properties, including the ledger of the defendants maintained by the Appellant.

(e) It is made clear that this order is passed on the basis of concession made by the parties. This Court has not applied its mind to the merits of the arrangement agreed to between the parties. The arrangement ordered herein shall not be treated as precedent in any other matter between the parties.

(f) The appeal from order is disposed of in the above terms. No order as to costs.

3. In view of the disposal of the appeal from order, neither of the two civil applications survives and both are disposed of.

(S.C. GUPTE, J.)

Smita
Gonsalves

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Smita Gonsalves
Date: 2019.09.06
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